

RASMUS K. HAFSOS.

FEBRUARY 24, 1910.—Ordered to be printed.

Mr. GAMBLE, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 4473.]

The Committee on Indian Affairs, to whom was referred the bill (S. 4473) for the relief of Rasmus K. Hafsos, having had the same under consideration, beg leave to report that said bill do pass.

The facts in connection with the proposed measure are fully set forth in the accompanying communication from the Secretary of the Interior and the petition of the claimant which are hereto annexed and made a part of this report.

DEPARTMENT OF THE INTERIOR,
Washington, February 21, 1910.

SIR: Referring again to your communication of January 6, inclosing Senate bill 4473, for the reimbursement of Rasmus K. Hafsos in the sum of \$2,560 withheld as liquidated damages under his contract of December 14, 1906, for erecting certain buildings at the Bismarck Indian School, North Dakota, I have the honor to inform you that an investigation has been made with reference to this subject by the Indian Office, and the record shows that the amount above named was withheld to cover a delinquency of sixty-four days in the delivery of the buildings, the sum mentioned accruing at the rate of \$40 per day, as provided for in the contract.

The record shows further that, under date of December 4, 1907, the contractor applied for an extension, but that this request was denied for the reason that the contract had already passed the limit for its completion, and that no action of the department could revive it after expiration.

Inasmuch as the contract gave the Secretary of the Interior no authority to waive the liquidated damages which had accrued no action could be taken along such lines. As the record shows, however, that the delinquency was occasioned by scarcity of labor and material during the period of construction of the buildings and not through any fault of the contractor, the department has no objection to the reimbursement of Mr. Hafsos in the manner indicated.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Hon. MOSES E. CLAPP,
Chairman Committee on Indian Affairs, United States Senate.

Your petitioner, Rasmus K. Hafsos, a citizen of Aberdeen, county of Brown, State of South Dakota, respectfully represents that he submitted a bid under an advertisement of the Office of Indian Affairs, which was opened in said office on December 6, 1906, for the erection of certain buildings for Indian school purposes at Bismarck, N. Dak., and being the lowest bidder therefor, the award was made to him and contract and bond for the work was duly executed, and the same was approved by the Secretary of the Interior, the said contract bearing date December 14, 1906, and providing for the completion of the same, and for the turning over the buildings to the Government on or before November 1, 1907, and further providing for the deduction of \$40 as "liquidated damages" for each and every day of delay beyond that time.

There was some delay in the completion of the buildings and turning them over to the Government; but for said delay your petitioner was not directly responsible, and did all in his power to avoid, the circumstances of which will be hereinafter shown.

When the claim for the final payment under the contract was submitted to the Office of Indian Affairs, being for \$10,170.02, allowance was made thereon only of \$7,610.02, the difference, \$2,560, being suspended for reasons which more clearly appear in the following communication received by your petitioner from the Auditor for the Interior Department:

Notice of Settlement of Claim.

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE INTERIOR DEPARTMENT,
Washington, March 20, 1908.

SIR: Certification has been made this day to the Secretary of the Treasury that the sum of \$7,610.02 is due from the United States to you for final payment on contract of December 14, 1906, for the construction of buildings, etc., at the Bismarck Indian School, North Dakota, settlement No. 4312. Amount claimed, \$10,170.02; amount allowed, \$7,610.02; difference (suspended), \$2,560. (See difference sheet herewith.)

A warrant will be issued in payment thereof, and in due course of official business it will be forwarded to you by the Treasurer of the United States.

Respectfully,

R. S. PERSON, *Auditor.*

RASMUS K. HAFSOS,
(*Care of R. V. Belt, Attorney,*) *Washington, D. C.*

Statement of differences arising in the settlement of claim in favor of Rasmus K. Hafsos for buildings, etc., furnished for the Indian service for the Bismarck School, North Dakota (settlement No. 4312).

Amount claimed	\$10, 170. 02
Amount allowed	7, 610. 02
Difference (suspended)	2, 560. 00

The contract required that the entire work should be completed and turned over to the Government on or before November 1, 1907, and provided for the deduction of \$40 as liquidated damages for each and every day of delay beyond that time. The vouchers show that the work was not accepted until February 20, 1908, but a later explanation from the superintendent of construction and custodian shows that the delay beyond January 4, 1908, was at his request, and not the fault of the contractor. The delay, therefore, was sixty-four days, for which a suspension of \$2,560 is made at \$40 per day (\$2,560).

TREASURY DEPARTMENT,
OFFICE OF AUDITOR FOR THE INTERIOR DEPARTMENT,
March 20, 1908.

Your petitioner further represents that immediately upon receiving notice that said contract had been approved by the Secretary of the Interior he placed his orders for the necessary materials and manufactured articles required to enable him to comply with the requirements of his contract in every particular with establishments considered by him to be in every way reliable, responsible, and able to meet their engagements within the time specified; that for the delivery of some of the materials, etc., there was considerable delay, which was entirely beyond the power

of your petitioner to avoid or control, which will be fully shown by the correspondence with the said concerns on the matter, as hereinafter set out; that the failure of delivery of the said materials, etc., on time made it impossible for your petitioner to complete and turn over the buildings, etc., within the contract time; that seeing that this would be the case your petitioner made application for an extension of the contract time; that the said application was not granted, but the contractor was allowed to go on and complete the buildings, the matter of delay and deduction therefor to be considered when claim for final payment was under consideration; that your petitioner has already suffered great loss and damage by reason of the delay of delivery of required materials, etc., in pay of employees and otherwise, loss of time, and so forth; that the superintendent in charge of said school wrote the following letter to the Office of Indian Affairs:

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Bismarck, N. Dak., December 14, 1907.

SIR: Mr. R. K. Hafsos, contractor for the Indian school at Bismarck, N. Dak., writes stating reasons for failure to complete said plant by the 1st day of November as stipulated in contract, and requests that the penalty clause contained in said contract be not enforced; that proper steps be taken at once to accept the plant, if found in accordance with the terms of the contract, and that payment be made.

Provided that if certain five closets, now delayed, be not received, and in place at the time of acceptance a sufficient sum be retained till all is made satisfactory.

I believe the statements made in the above-mentioned letter are true, and I recommend that his requests be granted.

Very respectfully,

W. R. DAVIS, *Superintendent.*

HONORABLE COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.

The requests thus made were not granted, for reasons which the Office of Indian Affairs will be able to report upon this petition.

The following correspondence will show the causes for the delay on the part of your petitioner in completing the buildings, etc., within the contract time:

SIoux FALLS, S. DAK., *March 13, 1908.*

DEAR SIR: Refer to our contract for heating and plumbing in Indian school, North Dakota: In reply to your letter of yesterday relative to the delay in completing our work, we beg to advise you that last year was worst we have ever experienced in getting material in time to complete work without delay. Your job came in for more than the ordinary, for reason that the Indian Department specified an automatic closet with a sort of local vent, which is really a special, as they are not shown in any catalogue we possess. These closets are made by the Standard Sanitary Company, Pittsburg, Pa., and are sold only through the jobbers.

We purchased them through the Kellogg-Mackay-Cameron Company, Chicago, June 4, and we received the last closets in January, and then only after considerable warm correspondence, as we were at an expense keeping our men in Bismarck pending the arrival of the closets.

We are very sorry if our delay has caused you any trouble, but we assure you that we did everything within our power to complete the work without delay.

Our letter files are open to you if you wish to follow the attention we gave it.

Yours, very truly,

SYMONS-POWERS CO.
CHAS. D. SQUIRES, *President.*

Mr. R. K. HAFSOS,
Aberdeen, S. Dak.

MINNEAPOLIS, MINN., *March 17, 1908.*

DEAR SIR: Referring to the matter of brick for the Bismarck school, beg to advise, the opening of last season found it difficult to secure cars to make prompt shipments of materials. The spring was very backward, and delayed the yards from starting as early as usual and a great deal of rainy weather delayed them after they did start.

Yours truly,

MENOMINEE-HYDRAULIC PRESS BRICK CO.,
By ED. H. COBB.

R. K. HAFSOS,
Aberdeen, S. Dak.

MINNEAPOLIS, MINN., April 1, 1908.

DEAR SIR: We have your letter containing statement to the effect that you are having difficulty in obtaining settlement for the Indian school work on account of delay in completing same. We must say as far as getting out our mill work is concerned, we do not think that there was any unusual delay. Whatever delay there might have appeared to have been can only be ascribed to the fact that all orders during the height of the rush season last year were somewhat behind. This was the situation, not only in our factory, but in all factories here in the city and elsewhere. The season was an exceptional one, and the work kept piling in on us, and with the best of intentions we could not help but fall behind, and could not keep up with the demand for materials on the buildings. Such delay as there might appear to have been was wholly caused by the unprecedented state of affairs. If you will investigate these statements, you will find that all of the factories were contending with the same state of affairs.

It may be possible that during the coming year times will be somewhat slacker, and these delays may not be so apparent, and it will be easier for us to get the work out without falling behind. On any future jobs that you may trust us with, we will do the best that we can to get them out on time and avoid any unusual delays.

Yours, respectfully,

SIMONSON BROS. MANUF'G CO.,

Manufacturers of Sash, Doors, and Fine Interior Finish, etc.

R. K. HAFSOS,
Aberdeen, S. Dak.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE,
Bismarck, N. Dak., March 16, 1908.

DEAR SIR: Yours of the 12th instant requesting a statement from me relative to the causes of the delay in the completion of the Indian school buildings at this place is at hand, and I send the following:

On March 6, 1908, I received a letter from the Indian Office requesting further explanation relative to the postponing of gutters, and I immediately sent the following:

"Replying to your office letter F. Cl. 181592 (Mar. 3, 1908), I state that it was at my request that the laying of the gutters was deferred till spring. Mr. Hafsos agreed with me that the work could be done much more satisfactorily in the spring, and hence he was willing to incur the extra expense. He was prepared to do this work in October, but the water meter (to be furnished by the Government) was not here, so he was unable to connect with the city plant, and hence could not test the plumbing and fill the ditches. The meter has not been received yet.

"The Government was to make connection with the city electric plant. This was not done till January 19, 1908, so that a test of our plant could not have been made prior to that date."

The above is in explanation of or in addition to my letter to the Indian Office of the 20th ultimo, and is quoted by your Washington attorney in the letter inclosed to me.

I wrote the Indian Office December 6, 1907, giving the progress of the work, stating reasons for the delay and requesting that an inspector be sent to "pass on" the buildings, etc., not later than the 18th of December. The five belated closets mentioned in that letter, and ordered in June, were received in a few days, so that the steam fitter was prepared to make the test on the 14th of December, 1907. On that date I wrote the Indian Office, inclosing the contractor's request for extension of time, and recommended that the same be granted giving my reasons therefor. That being on file at Washington I need not reproduce it now. On January 1, 1908, I received office letter replying to mine of December 6, 1907, stating that Supervisor R. M. Pringle would be sent, but that "he would not be available for some little time," and that the inspection must be deferred till he arrives.

The steam fitter had been waiting for some time at heavy expense and now concluded that he would test his work to his own satisfaction and go home. For forty-eight hours full pressure of steam and water were kept on and everything worked satisfactorily. The electrician also waited for a time and he too went home. Now while the plant was not tested till January 4, 1908, readiness to do so on December 14, 1907, would, it seems to me, relieve the contractor from any blame whatever for delay subsequent to that date.

I will state further that the contractor used due diligence, incurring much extra expense in his effort to complete the work by November 1, as per the contract. When work was slack, waiting for material, men drawing large salaries were retained on the pay roll in order to hold them. The spring was unusually late and cold, severe snowstorms occurred, and during the summer the amount of rainfall was unprecedented in this locality. Cars could not be obtained to ship the crushed stone, causing several weeks' delay, and in order to get sand at all he was compelled to purchase some land, the owners of said pits refusing to sell to him at any price. The carpentering was mostly done under difficulties; owing to a lack of material, nothing could be done consecutively, and the men were compelled to go from place to place and from building to building wherever any material was available.

No loss has been sustained by the Government, for in any event the school can not open till after July 1, 1908.

Very respectfully,

W. R. DAVIS, *Superintendent.*

Mr. R. K. HAFSOS,
Aberdeen, N. Dak.

Your petitioner further represents that the amount, \$2,560, remains suspended in the Treasury and withheld from him, the officials there holding that special legislation is necessary to warrant payment of any sum that may have become due to the Government as "liquidated damages" under a contract providing therefor, as no executive officer has right to waive same, as may be done in case of penalty.

Your petitioner respectfully requests that the necessary legislation may be enacted authorizing and directing the payment to your petitioner of the said sum of \$2,560.

Your petitioner will ever pray.

RASMUS K. HAFSOS.

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